

learned Judge considered. Firstly, the fact that half of the period of suspension had lapsed. Secondly, he found the delay of two months unreasonable and no explanation given. Relying on the principle which governs the approach to be taken by an appellate court in a matter of this nature, it is our view that the decision should not be interfered with and accordingly the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Siong & Co., K.J. Foo & Co.; Reddi & Co.*

CHAI CHOON HON v. KETUA POLIS DAERAH, KAMPAR AND GOVERNMENT OF MALAYSIA

[S.C. (Abdul Hamid Ag.L.P., Mohamed Azmi & Abdoolcader S.C.JJ.) March 13 & April 8, 1986]

[Pulau Pinang – Supreme Court Civil Appeal No. 11 of 1985]

Administrative Law – Licence to hold dinner and lion dance in public place – Imposition of conditions for licence – Whether conditions reasonable – Restriction on number of speakers – Condition forbidding speeches to touch on political issues – Police Act, 1967, s. 27(2) – Federal Constitution, art. 10(1)(a).

Constitutional Law – Freedom of speech – Federal Constitution, art. 10(1)(a).

In this case the appellant had applied for a licence to hold a DAP solidarity dinner and lion dance in a public place. The first respondent issued the licence but imposed seven conditions, two of which the appellant sought to impugn on the ground that they were unconstitutional, null and void and of no effect in that they abridged the right of freedom of speech guaranteed under article 10(1)(a) of the Federal Constitution. One of the conditions restricted the number of speakers to seven only and part of the other forbade the speeches to touch on political issues. The learned trial judge held the latter condition pertaining to speeches touching on political issues to be an unreasonable restriction in violation of the right of freedom of speech but held the former restricting the number of speakers to be valid. The appellant appealed.

Held: there does not appear to have been any valid reason for the restriction imposed on the number of speakers within the time limit granted in the licence, that is from 5 p.m. to 11.30 p.m., and the particular condition was unreasonable in the circumstances as the police had the means to deal with any infringement of the time frame specified in the licence under the provisions of section 27 of the Police Act, 1967.

A Case referred to:

- (1) *Merdeka University Berhad v. Government of Malaysia* [1981] 2 M.L.J. 356, 360.

SUPREME COURT.

- B** *Karpal Singh* for the appellant.
T. Selventhiranathan (Senior Federal Counsel) for the respondents.

Cur. Adv. Vult.

- C** **Abdoolcader S.C.J.** (delivering the Judgment of the Court): The essential issue for determination in this appeal is the validity of a condition restricting the number of speakers at an assembly for which a licence was sought by the appellant from the first respondent as the licensing authority under the provisions of section 27(2) of the Police Act, 1967 ('the Act').

- D** Now for the background against which this point arises: The appellant as the Secretary of the Kampong Baru, Malim Nawar branch of the Democratic Action Party applied on August 3, 1984 to the first respondent under section 27(2) of the Act for a licence to hold a Democratic Action Party solidarity dinner and lion dance at the grounds of Tokong Lian Fah Meow from 5.00 p.m. to 11.30 p.m. on September 11, 1984. The first respondent issued the requisite licence but imposed
- E** 7 conditions, two of which (but partially in the case of one of them) the appellant seeks to impugn in the instant proceedings instituted by him for declarations to the effect that they are unconstitutional, null and void and of no effect in that they abridge the right of freedom of speech guaranteed
- F** under article 10(1)(a) of the Constitution of Malaysia. One of the conditions in question restricted the number of speakers at the dinner to 7 only and part of the other forbade the speeches to touch on political issues. Anuar J., after hearing evidence and submissions adjudged on December
- G** 13, 1984 the latter condition pertaining to speeches touching on political issues to be an unreasonable restriction in violation of the right of the freedom of speech but held the former restricting the number of speakers to be valid.

- H** Section 27(2) of the Act empowers the first respondent as the licensing authority to grant an application for a licence by any person intending to convene or collect any assembly or meeting or to form a procession in any public place if he is satisfied that the assembly, meeting or procession is not likely to be prejudicial to the interest of the

security of the Federation or any part thereof or to excite a disturbance of the peace, and to define the conditions upon which such assembly, meeting or procession is permitted. The question presented in these proceedings in relation to the validity of the condition restricting the number of speakers revolves in our view not on the matter of its constitutionality but rather on its reasonableness *vel non* in the light of the relevant provisions of the Act and the evidence adduced. The condition in question is certainly open to curial scrutiny by way of judicial review, and we need only refer in relation to the principles therefor to the judgment in *Merdeka University Berhad v. Government of Malaysia*⁽¹⁾ (at page 360).

The first respondent gave evidence to the effect that he imposed the condition restricting the number of speakers to 7 because of the time factor and the fact that he would have had to send his men to be present near the scene to ensure that there would be no breach of the peace, and added that there was no other reason. He went on to say that he considered that the dinner would last only until 8.00 p.m. or 9.00 p.m. and then only would the speeches start, and he 'concluded', to quote him, that each speaker would speak for half-an-hour and that as a result the speeches would go on till late at night. We can see no justification in the light of this evidence for the imposition of this restriction as to the number of speakers or that there was any ground for the first respondent to assume that without imposing this restriction the matter of security would be affected or that a disturbance of the peace would be excited. There was a specific time limit stipulated in the application for the licence, namely, 5.00 p.m. to 11.30 p.m., and the licence was in fact issued for that period. If the time limit had been breached, then it was open to the police to exercise their powers and take the necessary action under the provisions of subsections (3), (4), (6) and (8) of section 27 of the Act. The first respondent was only speculating as to what might happen, and on the logic of his explanation for the reason for the imposition of the restriction in question, he might as well have restricted the number of speakers to one only and no more on the speculative hypothesis that he might be unduly prolix and periphrastic.

In the premises we find that there does not appear to have been any valid reason for the restriction imposed on the number of speakers within the time limit granted in the licence, and we find this particular condition unreasonable in the circumstances as the police had the means to deal

A with any infringement of the time frame specified in the licence under the provisions of section 27 of the Act.

B We accordingly at the conclusion of argument allowed this appeal with costs and declared that the condition restricting the number of speakers to 7 was unreasonable. The deposit in court lodged by way of security will be paid out to the appellant.

Appeal allowed.

C Solicitors: *Karpal Singh & Co.*

D
P. PATTO v. CHIEF POLICE OFFICER, PERAK & ORS.

[S.C. (Abdul Hamid Ag. L.P., Mohamed Azmi & Abdoolcader S.C.JJ.) March 13 & April 8, 1986]

E [Pulau Pinang – Supreme Court Civil Appeal No. 186 of 1985]

F *Administrative Law – Licence to hold dinner and lion dance in public place – Refusal of licence by wrong authority – Appellate body wrongly assuming authority – Refusal made in wholly unreasonable period of time so as to preclude appeal – Police Act, 1967, s. 27.*

G In this case the appellant applied to hold a solidarity dinner and lion dance in a public place on August 30, 1984. The applications were made to the O.C.P.D., Kampar, Perak (the third respondent). The appellant received a letter at 4.30 p.m. on August 30, 1984 from the third respondent informing him that his applications had been forwarded to the Perak Contingent Police Headquarters for consideration by the first and second appellants and that after consideration the applications had been refused. The appellant brought an action for declarations that the first respondent who was the licensing authority under section 27(2) of the Police Act, 1967, did not himself consider the applications and that the applications had in fact been considered by the first and second respondents who had no authority to do so. The learned trial judge dismissed the appellant's claim. The appellant appealed.

H Held, allowing the appeal: (1) the third respondent as the licensing authority under the provisions of section 27(2) of the Police Act, 1967 had abdicated his functions by transmitting the applications for consideration and determination by the first and second respondents;

I (2) the first respondent is the appellate authority to entertain an appeal against the refusal of the licence but in this case he purported to act at first instance by considering and determining the original applications, thereby depriving the appellant of his statutory right of appeal;